LIM SEO v. REGINA

[A. Cr. J. (Rose C.J.) August 8, 1962]

[Singapore — Magistrate's Appeal No. 74 of 1962]

Criminal Law and Procedure — Prosecution by sanction — Specific authorisation to prosecute — Election to prosecute under different section — Whether illegality can be cured — Public interest — Criminal Procedure Code (Cap. 132), ss.128 and 440.

Where counsel had a specific authorisation to prosecute an accused under a particular section, his justification for appearing on behalf of the Crown in Court was that authorisation. If he elected to proceed under a different section carrying a heavier maximum sentence than the one which was authorised then it was an illegality that could not be cured.

The public interest is that in any criminal matters when prosecutions are conducted by means of sanctions the provisions of the law should be observed.

MAGISTRATE'S APPEAL.

D. G. Ironside for the appellant.

Peter Lee for the respondent.

Rose C.J. (delivering oral judgment): In this case the appellant, a woman rubber tapper, was convicted under section 381 of the Penal Code of stealing some latex which was valued at 10 cents, she being an employee of the owners of a plantation.

The matter came up on appeal a month ago and a point was taken by Mr. Ironside, learned counsel for the appellant, that Mr. Peter Lee who appeared for the Crown in the matter was not properly authorised to do so. The case was then adjourned in order to enable learned counsel to meet this point for which he was unprepared. To my surprise it has taken a full month for the appeal to be restored.

What happened was that learned counsel was authorised to prosecute this woman under section 379 of the Penal Code, which carries a maximum sentence of three years' imprisonment. In fact learned counsel proceeded under section 381. It is important to note that the amendment was not made by the Court but by the prosecuting authority and therefore the case appeared as a case under section 381, which carries a maximum sentence of seven years' imprisonment.

Mr. Lee now takes the point that he need not have had an authorisation at all. That may be. I do not propose to decide that point because I do not think it arises in this case. The fact of the matter is that he had a specific authorisation to prosecute this particular woman under a particular section. That was his authorisation, that was his justification for appearing on behalf of the Crown in Court. He elected to proceed under a different section carrying a heavier maximum sentence than the one which was authorised — this point is important. This seems to me to be an illegality that cannot be cured.

At the last hearing learned counsel suggested that this ubiquitous section 440 could be called in aid but it is, I think clear that that cannot be so in view of the specific reference under section 440(b) to the want of any sanction required by section 128. This would seem to defeat any presumption of generality.

Learned counsel for the respondent has referred to the public interest. It seems to me that the public interest in this matter is quite clear. The public interest is that in any criminal matters when prosecutions are conducted by means of sanctions the provisions of the law should be observed.

When a basic mistake of the kind under consideration has been made I am unimpressed by the contention that had the requirements of the law been duly observed a conviction must inevitably have followed.

In all the circumstances of this case I think the appellant is entitled to succeed. The appeal therefore will be allowed and the conviction and sentence set aside.

Appeal allowed.

Solicitors: *D. G. Ironside; S. K. Lee.*

WONG CHEONG KIM v. DEPUTY PUBLIC PROSECUTOR

[A. Cr. J. (Rose C.J.) August 9, 1962]

[Singapore — Magistrate's Appeal Nos. 110 and 112 of 1962]

Local Government Ordinance, 1957, s.213 — Licensing of stalls — Delay in granting licence — Inference that bribe is expected — It is essential not only that an officer should be incorruptible but he should manifestly appear to be incorruptible.

Criminal Law and Procedure — Bribery and corruption — Sentence — Circumstances to be taken into account in assessing.

General observations on corrupt practices and their relevance to sentences on conviction. Need to distinguish between various forms.

MAGISTRATE'S APPEALS.

Robert Chee for the appellant.

A. W. Ghows (Senior Crown Counsel) for the respondent.

Rose C.J. (delivering oral judgment): This is a case that has caused me some concern. It appears that a gentleman called Mr. Loh Pui Kay is the Superintendent in charge of the Markets and Hawkers Department of the City Council. It is his function amongst others to consider applications for stalls and apparently as long ago as May 1961 he was approached by the present appellant in this case for one of these empty stalls. A written application, however, was not put in until the 8th of August.

Conversations, then took place in May and the written application was put in on the 8th of August. Mr. Loh himself says that there were only two applicants, the appellant and a woman whose husband already had a stall in